

REMARKS

Applicant respectfully submits this Amendment in response to the non-final Office Action mailed on January 22, 2009.

In the Office Action, the Examiner rejected claims 32-38 and 41-46 under 35 U.S.C. § 101 as allegedly falling outside the statutory categories of invention; and rejected claims 47-49 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kanekiyo et al. (U.S. Patent No. 5,799,018) in view of Ben Michael et al. (U.S. Patent No. 6,078,565). The Examiner allowed claims 39 and 40, and indicated that objected to claim 50 would be allowed if rewritten in independent form including all of the elements of the base claim and any intervening claims. Applicant appreciates the Examiner's indication of allowable subject matter.

By this Amendment, Applicant amends claims 32, 35, 39, 41, 43, 45-48, and 50; and cancels claim 33. After entry of this Amendment, claims 32 and 34-50 will remain pending.

Applicant traverses the rejections and submits that the claims are patentable over the cited references for at least the reasons set forth below.

I. Summary of the Examiner Interview

During a telephonic interview conducted on February 12, 2009, Applicant's representative traversed the Examiner's rejections of claims 32-38 and 41-46 under 35 U.S.C. § 101, and the Examiner's rejections of claims 47-49 under 35 U.S.C. § 103(a). The Examiner indicated that claims 32-38 would comply with 35 U.S.C. § 101 if amended to recite a "memory" or "storage device." The Examiner agreed that claims 41-44 are sufficiently "tied to a particular machine" to comply with 35 U.S.C. § 101.

Applicant's representative also argued that claims 45 and 46 are sufficiently "tied to a particular machine" to comply with 35 U.S.C. § 101, and the Examiner indicated that the rejection would be withdrawn if the last line of the paragraph starting on line 13 of page 2 of Applicant's specification were deleted.

With respect to the § 103 rejections, Applicant's representative also noted that the Kanekiyo reference does not disclose or even suggest all of the elements of claims 47-49 except for a memory, as alleged by the Examiner. Applicant's representative pointed out the upstream and downstream function of Kanekiyo in comparison to the front-to-back sequential transmission and receipt of data disclosed in the present application. The Examiner acknowledged the deficiencies of the Kanekiyo reference and the advantages of the present application over the prior art. The Examiner also suggested claim amendments to overcome the prior art rejections.

II. § 101 Rejection of Claims 32-38 and 41-46

Applicant traverses the Examiner's rejection of claims 32-38 and 41-44 under 35 U.S.C. § 101 as allegedly failing to be "positively tied to a particular machine that accomplishes the claimed method steps [or transformative of] underlying subject matter." (Office Action, page 2.) Although Applicant disagrees with the rejection of claims 32-38 and 41-46 under 35 U.S.C. § 101, in order to expedite the prosecution of this application, Applicant has amended claim 32 to recite a "memory," which the Examiner acknowledged would overcome the rejection under § 101.

With respect to claims 45 and 46, in the interest of expediting prosecution of this application, Applicant has deleted the last line of the paragraph starting on line 13 of page 2 of Applicant's specification, as requested by the Examiner.

Applicant believes that all of the pending claims now comply with 35 U.S.C.

§ 101 and requests that the Examiner withdraw these rejections.

III. §103 Rejection of Claims 47-49

Applicant traverses the rejection of claims 47-49 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kanekiyo et al. in view of Ben-Michael et al.

The Office Action asserts that Kanekiyo et al. discloses “a first transmitter (figure 1, reference 122) for sending a first stream of digital data elements, starting with data element 1 of the packet and proceeding upward in sequential order (figure 1, reference 103)(col. 3, lines 56-61, and figure 3, col. 4, lines 32-35), and a second transmitter (figure 1, reference 113) for sending a second stream of digital data elements, starting with data element n of the packet and proceeding downward in sequential order (figure 1, reference 104) (col. 3, lines 63-67, and figure 4, col. 4, lines 35-38).” (Office Action, page 4.) Applicant respectfully disagrees with this characterization of Kanekiyo et al.

As acknowledged by the Examiner during the telephonic interview, Kanekiyo et al. merely discloses the upstream transmission of data through path 103 and downstream transmission of data through path 104. (See Fig. 1; Col. 3, lines 53-67). Kanekiyo et al. does not teach or suggest, “a first transmitter for sending a first stream of digital data elements, starting with data element 1 of the packet and proceeding upward in sequential order, and a second transmitter for sending a second stream of digital data elements, starting with data element n of the packet and proceeding downward in sequential order; wherein the first transmitter and second transmitter are configured to at least start sending the first stream and second stream approximately simultaneously,” as recited in currently amended claim 47 (emphasis added).

The Office Action admits that Kanekiyo et al. fails to disclose a memory for storing the packet of digital data, but asserts that Ben-Michael et al. cures this deficiency. However, even if Ben-Michael et al. teaches these features (which Applicant does not necessarily concede), Ben-Michael et al. does not cure the other deficiencies of Kanekiyo et al. as described above.

Thus, as admitted by the Examiner, none of the cited references, either alone or in combination, teach or suggest each and every element of independent claim 47. Claims 48 and 49 depend from claim 47, and therefore include all of the elements of claim 47, which is allowable for the reasons discussed above. Applicant respectfully requests that the rejection of claims 47-49 under 35 U.S.C. § 103(a) be withdrawn.

CONCLUSION

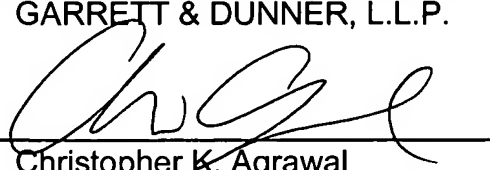
In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims. If the Examiner believes another telephone interview will expedite issuance of this application, the Examiner is requested to call Applicant's representative, whose name and registration number appear below.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: May 22, 2009

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